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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/658,306
Filing Date: September 09, 2003
Appellant(s): SAXON ET AL.

MAILED

AUG 08 2007

GROUP 3600

William S. Gottschalk
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/23/07 appealing from the Office action
mailed 6/30/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: The three grounds of rejection should read, respectively:

- I. The rejection of Claims 14 and 16 under 103 over Robey in view of Vandenberg. (Examiner's emphasis to show changes.)
- II. The rejection of claims 14, 16 and 21-23 under 103 over Christenson in view of Hutchens. (Examiner's emphasis to show changes.)
- III. The rejection of Claim 19 under 103 over Christenson in view of Hutchens in further view of Garcia and Pierce.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,718,445	VanDenberg	2-1998
5,607,740	Christenson	11-1991
4,919,445	Robey	4-1990
3,406,439	Hutchens	10-1968
5,722,688	Garcia	3-1998
5,720,489	Pierce et al.	2-1998
3,856,344	Loeber	12-1974

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robey (US 4,919,445) in view of VanDenberg (US 5,718,445) Robey teaches a suspension slider (22- See Figure 2) for a vehicle trailer (10) including first and second spaced apart longitudinal members with a structure forming a continuous horizontal wall that interconnects the first and second longitudinal members and has first and second angled portions (38) converging to a central portion (middle of central lateral beam shown in Figure 2) and two lateral portions extending from the central portion (two sides of lateral beam coming off the central portion.) Robey further teaches a support (26) for front and rear suspension assemblies (24, 20) but only discloses the support schematically, and does not show two downwardly depending hangers. VanDenberg

teaches that such hangers (see 5,6) are well known in the tandem axle art, and used to provide tandem wheels with a suspension that is roll stable and resistant to lateral deflection (see VanDenberg, col. 1, lines 7-14.) It would have been obvious to one having ordinary skill in the art at the time of the invention to include the tandem axle suspension and hangers of VanDenberg with the slider of Robey, in order to provide a tandem axle that is roll stable, and resistant to lateral deflection.

2. Claims 14, 16 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson (US 5,067,740) in view of Hutchens (3,406,439) Please see the previous office action examiner annotated Figure 10 from Christenson. Christenson teaches a suspension slider (70) for a vehicle trailer (30) including first and second spaced apart longitudinal members (marked A in Figure 10) with a structure forming a continuous horizontal wall that interconnects the first and second longitudinal members and has first and second angled portions (B) converging to a central portion (C- portion of rear lateral member with central oval hole in it) and two lateral portions extending from the central portion (D- each of two sides of the lateral member with two oval holes each in them.) Christenson fails to teach hangers that support front and rear suspensions. Hutchens teaches providing integral hangers (44) that support front and rear tandem axle suspensions, and are useful because they provide for the production of a suspension unit with a minimum number of parts and fabricating steps (see col. 1, lines 11-20.) It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the slider of Christenson to include integral hangers in order to provide for the production of a suspension unit with a minimum number of parts

and fabricating steps. Regarding claims 21, 22, and 23, the hangers form an inverted U-shaped cross section, provided by a unitary wall and include laterally spaced apart vertical walls, (see Figures 3 and 4.)

3. Claims 17, 18, 20, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson (US 5,067,740) in view of Hutchens (3,406,439) and further in view of Garcia (US 5,722,688) The combination of Christenson in view of Hutchens is discussed above, and regarding claim 20, third and fourth angled portions converge to a second central portion (F) and the second central portion has second lateral portions extending in opposing directions (G.) and is silent regarding the construction of the slider. Christenson does indicate that it is contemplated to form trailer frames from two plates (trailer 30 is formed from plates 46 and 47 connected by vertical web 48, see Figure 5.) Garcia teaches that such a construction is useful because it is strong and simple to manufacture (see col. 5, lines 30-45 and Figure 2 and 12b) It would have been obvious to one having ordinary skill in the art at the time of the invention to construct the trailer of Christenson in the manner taught by Garcia, and such include first and second plates and a vertical member between them, because, as taught by Garcia, such a construction is strong and simple to manufacture.

4. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson (US 5,067,740) in view of Hutchens (3,406,439) and Garcia (US 5,722,688) and further in view of Loeber (US 3,856,344.) Christenson, Hutchens and Garcia are discussed above, and do not teach lightening holes. Loeber teaches that it is known to provide lightening holes (56, 64) to vehicle frame structure in order to provide

a strong, but lightweight frame structure that substantially lightens the load (see col. 5, line 61.) It would have been obvious to one having ordinary skill in the art at the time of the invention, in view of the teaching of Loeber to include lightening holes in the vertical members of Christenson in view of Hutchens and Garcia in order to provide a frame with a lightweight by strong structure.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christenson (US 5,067,740) in view of Hutchens (3,406,439) and Garcia (US 5,722,688) and further in view of Pierce et al. (US 5,720,489.) Christenson in view of Hutchens and Garcia is discussed above and fails to teach triangular shaped braces as claimed. Pierce et al. teaches that it is known to provide triangular shaped braces with u-shaped cross section (170) which are used to provide additional strength to the sliders. It would have been obvious to one having ordinary skill in the art at the time of the invention to include triangular shaped braces, as taught by Pierce et al., in order to provide additional strength to the sliders.

(10) Response to Argument

I. Response to Applicant's argument I, that there is no motivation to modify

Robey to provide the hangers of VanDenberg. First of all, the Examiner notes that KSR forecloses the argument that a specific teaching, suggestion or motivation is required. See the recent Board decision *Ex Parte Smith*, -USPQ2d—slip.op. at 20, (Bd. Pat.App.&Interf.June 25, 2007) (citing *KSR*, 82 USPQ2d at 1396) However, it is also noted that VanDenberg provides a very explicit motivation for utilizing the type of suspension taught, that motivation being that it provides a tandem axle that is roll stable

and resistant to lateral deflection. VanDenberg uses hangers in this particular suspension, and does not teach that the roll stable suspension would be installed without hangers, and as such one having ordinary skill in the art would be led to include the hangers, because that is how VanDenberg teaches the physical manifestation of the particular suspension. The Examiner has stated in the advisory action that the use of the hangers would follow "logically and obviously" because VanDenberg teaches the hangers, as opposed to the absence of hangers. The motivation, that is the attribution of a suspension system that is roll stable and resistant to lateral deflection is an attribution that follows from the suspension system as a whole. Regarding the aside that is argued on page 5, 2nd full paragraph of the Applicant's remarks, it is the Examiner's opinion that it is moot that the "parallelogram suspensions may be used without hangers". VanDenberg does not teach that such is the case, but clearly shows the hangers.

The Examiner notes additionally, the invention as claimed merely requires the substitution of one type of tandem axle suspension (that of Robey, which is disclosed somewhat schematically) with another, that of VanDenberg. Both Robey and VanDenberg teach sliders with tandem axle suspensions. It would have been obvious to one having ordinary skill in the art to substitute one suspension system for the other, to achieve the predictable result of providing a tandem axle suspension that is roll resistant. The Examiner notes that the Applicant has asserted in his arguments that "Parallelogram suspension have been used widely on vehicles..." VanDenberg teaches, implicitly by showing such a suspension provided with a hanger, that one such way to manifest this suspension on a slider is to provide a hanger. It is noted that the two

options available to someone looking to VanDenberg would be the options of either including a hanger (as clearly disclosed by VanDenberg) or not including a hanger. The claimed invention would have been obvious because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success (in this case a functioning suspension system which is roll resistant), it is likely the product not of innovation but of ordinary skill and common sense. *In re KSR International Co. v. Teleflex Inc.*, 550 U.S.---, 82 USPQ2d 1385 (2007.)

II Response to Applicant's second argument, that there is no motivation to modify Christenson to provide the hangers of Hutchens. Once again, the Examiner notes that KSR forecloses the argument that a specific teaching, suggestion or motivation is required. See the recent Board decision *Ex Parte Smith*, -USPQ2d— slip.op. at 20, (Bd. Pat.App.&Interf. June 25, 2007) (citing *KSR*, 82 USPQ2d at 1396) However, Hutchens explicitly teaches a particular advantage to the integral hangers provided as part of a tandem axle slider assembly. The advantage is that by providing integral hangers, the suspension can be included with a minimum number of parts and fabricating steps. The Applicant further argues that "it is the Examiner's position that Christenson teaches that every vehicle suspension arrangement should use, and would benefit from, downwardly depending hangers". The Examiner has not indicated in her rejection that this is the case. However, it is likely that Christenson would benefit from integral hangers, because Christenson shows a tandem axle, and while the suspension arrangement is not shown, the attachment of the arrangement is shown, and would

require additional fabricating steps. Hutchens additionally teaches that the particular hanger arrangement is an improvement applicable to a wide variety of tandem axle vehicles (see col. 1, lines 25-50.) Hutchens identifies the problems associated with tandem axle vehicles, including trailers (which is what Christenson teaches) and then goes on to propose a solution that when combined with Christenson leads to the claimed invention. It is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

III Response to the Applicant's argument that there is no motivation to modify either Christenson, Hutchens or Garcia with the triangular-shaped braces of Pierce. Once again, the Examiner notes that KSR forecloses the argument that a specific teaching, suggestion or motivation is required. See the recent Board decision *Ex Parte Smith*, -USPQ2d—slip.op. at 20, (Bd. Pat.App.&Interf.June 25, 2007) (citing KSR, 82 USPQ2d at 1396) Pierce teaches that it is known in the slider frame art to provide triangular braces, and the Examiner notes that providing strengthening braces is well understood by one of ordinary skill as a technique that is part of the ordinary capabilities of one skilled in the art. All of the components claimed are known from the combination of Christenson, Hutchens, Garcia and Pierce et al. All the claimed elements where known in the prior art, and one skilled in the art could have combined

the brace in the location as claimed by known methods, as taught by Pierce et al. with no change in the functions, and the combination would have yielded the predictable result of a stronger slider frame.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ruth Ilan

Primary Examiner

AU 3616

/Ruth Ilan/

August 2, 2007.

Conferees:

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